

28/10/14  
IN THE SUPREME COURT OF INDIA

(CIVIL ORIGINAL JURISDICTION)

WRIT PETITION (CIVIL) NO. 829 OF 2013

IN THE MATTER OF

Sh. S.G. VOMBATKERE & ANR

Petitioner

Versus

UNION OF INDIA & Ors.

Respondents

COUNTER AFFIDAVIT ON BEHALF OF THE RESPONDENT NO. 1

I Chittaranjan Dash working as Director (PF-II), Department of Expenditure ,  
Ministry of Finance, North Block, New Delhi do hereby solemnly affirm and state  
as under:-

1. That the Deponent herein is Respondent No.1 in the above mentioned Writ  
Petition (Civil) No.829 of 2013.
2. That Writ Petition (Civil) No.829 of 2013 has been filed seeking a  
mandamus from this Hon'ble Court restraining inter-alia, the UIDAI from  
issuing Aadhaar Cards by way of Executive Order dated 28.01.2009.

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3. That this Hon'ble Court has been pleased to entertain the above mentioned writ petition and in its interim order dated 23.09.2013 was pleased to direct that :

"In the meanwhile, no person should suffer for not getting the Aadhaar card in spite of the fact that some authority had issued a circular making it mandatory and when any person applies to get the Aadhaar Card voluntarily, it may be checked whether that person is entitled for it under the law and it should not be given to any illegal immigrant."

4. That the above said interim order passed by this Hon'ble Court, with great respect, has very serious implications in the implementation of a number of social welfare and other schemes, and has created doubts in the minds of several million residents of India who are beneficiaries under various schemes being currently implemented by the Union Government and several state Governments as also those of Public Sector Undertaking using Aadhaar platform, regarding the validity and usefulness of those schemes.

5. That the first part of the interim order is reproduced below :

*".. No person should suffer for not getting the Aadhaar card in spite of the fact that some authority had issued a circular making it mandatory".*

The deponent herein seeks to explain this aspect of the matter in greater detail in the following paragraphs

6. That it is humbly submitted that management of the fiscal deficit is a key component of the Public Finance policy of the Government of India. Open ended commitments on a host of uncapped subsidies are recognized to be



particularly problematic for fiscal credibility. The unequal distribution of subsidies amongst the poor and the rich also necessitate corrective policy measures to be put in place. Therefore, the roadmap of the Government for fiscal consolidation aims to contain and distribute subsidies through better targeting.

7. That in the last few years, public expenditure on welfare programmes targeting individual beneficiaries has increased dramatically in the country. In the Eleventh Plan Period, nearly Rs.7 lakh crore has been spent on the 15 major flagship programmes of the Government. During the financial year 2012-13 alone, the expenditure on LPG subsidy was over Rs.39,000 crore, on MGNREGS Rs.33,000 cr., on Fertilizer subsidies Rs.41,974 crore and Rs.85,000 cr. On food subsidy.
8. That however, despite various initiatives at improving the delivery mechanisms for grant of benefits and subsidies, the schemes suffer due to undetected fake and duplicate entities in the beneficiary lists, and for want of transparency on the end beneficiary. There are no fool-proof standard methods of authentication to ensure the benefits e.g. food rations, wages or subsidized LPG cylinder are actually availed by the intended beneficiaries as most of the last mile delivery systems are paper-based and can possible by manipulated. This has not only resulted in wastage of public money but also dissatisfactions when benefits doe not reach the intended beneficiaries" due to middlemen and rent seeking.
9. That it is humbly submitted that the use of Aadhaar in implementation of government schemes is designed to ensure that benefits and subsidies are directly given only to eligible beneficiaries using its unique de-duplication and authentication capabilities. This is expected to bring transparency to



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grant of benefits to individual beneficiaries of Central Schemes, terminate pilferage and stop subsidy payments to those who don't require it. A gradual introduction of Aadhaar beginning with schemes where flow of funds is relatively simple like scholarships, benefits to women and children and labour in districts with high enrolment of Aadhaar is planned.

10. That Aadhaar will facilitate a switch from the grant of benefits based on paper records (whether in cash or to unverified bank accounts using manual procedures) to end-to-end electronic transfers directly to Aadhaar seeded bank accounts of beneficiaries. The new system is designed to ensure :-

- a) Accurate targeting
- b) De-duplication
- c) Reduction of fraud and corruption
- d) Process re-engineering of schemes for simpler flow of information and funds.
- e) Greater accountability
- f) Elimination of wastes in subsidy transfer

11. That it is most humbly submitted that the use of Aadhaar is an important initiative of the Government to cut down leakages and improve targeting of beneficiaries. It is a trend setter in the use of modern technology to bring benefits to the poorest, especially the rural poor.

12. That Care is being taken by the Government to minimize inconvenience during the transition period and categorical instructions have been issued to ensure that there is no denial of service for want of Aadhaar or bank accounts.



A careful and staggered implementation of the programme is being undertaken using learning's of one stage to move to the next. Early evidence under various schemes confirms the ability of Aadhaar to remove fake/ duplicate beneficiaries, authenticate beneficiaries, initiate process re-engineering and promote financial inclusion.

13. That it is, therefore, prayed that this Hon'ble Court may be pleased to modify its order dated 23.09.2013 and may be pleased to allow the deployment of Aadhaar as a unique identity verifier for grant of Government benefits consistent with the aim of the Government to reduce fiscal deficit through targeted grant of benefits.

Deponent

Verification

Verified at New Delhi on this 25<sup>th</sup> day of October, 2013 that the contents of the above counter affidavit are true and correct. Nothing material has been concealed therefrom.

Deponent

Filed by

(D S Mahra)

Advocate for the Respondent

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IN THE SUPREME COURT OF INDIA  
CIVIL ORIGINAL JURISDICTION  
CIVIL WRIT PETITION No. 829 of 2013

MR. S.G VOMBATKARE & ANR	.....	PETITIONERS
	VS	
UNION OF INDIA & ORS.	.....	RESPONDENTS

COUNTER AFFIDAVIT ON BEHALF OF RESPONDENT NO.3

I, Ashish Kumar s/o Shri U. Kumar, aged 48 years, R/o C-II/2178, Vasant Kunj, New Delhi – 110 070, do hereby solemnly affirm and state as under:-

1. That I am working as Assistant Director General in the Office of Respondent No. 3 and I am duly authorized to depose by way of the present Counter Affidavit on behalf of Respondent No.3.
2. I have gone through the contents of the Writ Petition and at the outset I wish to deny each and every contention, allegation and averment made in the Writ Petition and the same shall be deemed to be specifically traversed and denied unless expressly admitted by me hereinafter.
3. I respectfully state and submit that the Writ Petition filed by the Petitioner is not at all maintainable and ought to be dismissed in limine. It is respectfully submitted that the Writ Petition is grossly barred by delay and laches. Further, the frame of the Writ Petition raises plain and simply policy issues which cannot be allowed to raised in a purported PIL. Besides, the Writ Petition filed is completely premature as the legislative process regarding the subject matter of the Writ Petition is already underway in the Parliament.



4. It is further submitted that the allegation that the Unique Identification Project ("UIDAI Project") and the Aadhaar Scheme violates fundamental rights is entirely misconceived and to the contrary the said UIDAI project is a giant step forward in ensuring the Right to Identity which is a facet of Article 21 and a basic human right recognized by the United Nations.
5. It is submitted that the Writ Petition has been filed without noticing or appreciating the history of the initiative, the background in which the initiative of "Aadhaar" was conceived by the Government and the acute problem faced by the administration in making available the benefit of welfare and social schemes to the rightful beneficiaries. The Aadhaar Scheme has been conceived through a thought churning and consultative process with various stake holders at the highest level right from 2006 to 2009 provide a tamper proof and a verified electronic data bank which can serve a legitimate platform for delivery of State services.
6. It is submitted that Aadhaar Scheme has been hailed as one of kind in the world and has been regarded a pioneer scheme of providing identity to individuals. The said Aadhaar Scheme is also technologically and logistically also superior to other identity programs throughout the world. It is submitted that Writ Petition has been filed without understanding the true scope, ambit and reach of the Aadhaar Scheme which is poised to be a giant leap forward for the State in securing social and economic well being of its people.
7. It is respectfully submitted that the Writ Petition is not at all maintainable



ought to be dismissed in limine on each of the following grounds which are taken in the alternative.

# I. PRELIMINARY OBJECTIONS

## (i) Writ Petition barred by delay and laches

8. Before adverting to the reply on merits to the Writ Petition, I wish to bring to the kind attention of this Hon'ble Court that the Writ Petition filed is completely barred by delay and laches. The present Writ Petition has been filed in September 2013. The Writ Petition at page 38 has interalia prayed for quashing and setting the aside the UIDAI project. It is submitted that the prayers made in the Writ Petition are not at all maintainable on the singular ground of delay and laches. The UIDAI was set up as early as in January 2009 and work had commenced on the Aadhaar project since then. Even prior to September 2009, the project was discussed at various levels from 2006 to 2009 which facts have been in public domain.
9. As of present, a total of 53Crore enrolments have taken place.. Since its inception UIDAI has so far incurred an expenditure of Rs 3,496 crore upto 30<sup>th</sup> September 2013. In the last few months, there has been more than 65 Lakh authentications of identity done by UIDAI.
10. The UIDAI has also signed Memoranda of Understanding (MoU) with 35 States and Union Territories. MoUs have also been signed with various central Ministries/Departments such as Ministry of Human Resource Development, Ministry of Rural Development, Ministry of Petroleum and Natural Gas and India Post, Registrar General of India (RGI), Indira Gandhi National Open University (IGNOU), 25 Public Sector Banks/Financial Institutions, National Payment Corporation of India (NPCI) and other institutions etc.



11. UIDAI has set up all the planned eight Regional Offices and 242 out of the 383 sanctioned posts have been filled up so far. A Project Management Unit (PMU) comprising a core team of experts has been established and at present 80 resources are rendering their services. The project has also been had service of numerous volunteers and Sabbaticals.
  
12. It is submitted that all the above facts regarding the Aadhaar Scheme have been in public domain since 2009. However, the Petitioner has chosen to file the Writ Petition only in September 2013. It is respectfully submitted that there is no explanation whatsoever in the Writ Petition as to why the Petitioner chose to wake up at this belated stage when the Project is at its peak. On this singular ground of delay and laches, this Writ Petition ought to be dismissed in limine with costs. In these circumstances, the Writ Petition is not at all maintainable when so much time had elapsed, the relevant facts were within the knowledge of the Petitioner, and such huge amounts had been invested and expenditure incurred towards the Project.
  
13. This Hon'ble Court has, in *Narmada Bachao Andolan v. Union of India*, (2000) 10 SCC 664, recognized the value of investments made whilst dealing with a PIL filed at a belated stage and observed as under:
  - "46. ...It has been in existence since 1986 but has chosen to challenge the clearance given in 1987 by filing a writ petition in 1994. It has sought to contend that there was lack of study available regarding the environmental aspects and also because of the seismicity, the clearance should not have been granted. ....
  47. The project, in principle, was cleared more than 25 years ago when the foundation stone was laid by



late Pandit Jawahar Lal Nehru. Thereafter, there was an agreement of the four Chief Ministers in 1974, namely, the Chief Ministers of Madhya Pradesh, Gujarat, Maharashtra and Rajasthan for the project to be undertaken. .... the Government did in 1987 finally give environmental clearance. It is thereafter that the construction of the dam was undertaken and hundreds of crores have been invested before the Petitioner chose to file a writ petition in 1994 challenging the decision to construct the dam and the clearance as was given. In our opinion, the Petitioner which had been agitating against the dam since 1986 is guilty of laches in not approaching the Court at an earlier point of time.

48. When such projects are undertaken and hundreds of crores of public money is spent, any individual or organisations in the garb of PIL cannot be permitted to challenge the policy decision taken after a lapse of time. It is against the national interest and contrary to the established principles of law that decisions to undertake developmental projects are permitted to be challenged after a number of years during which period public money has been spent in the execution of the project."

14. In *Raunaq International v. IVR Construction Ltd*, (1999) 1 SCC 492,

this Hon'ble Court held that:

"17. Normally before such a project is undertaken, a detailed consideration of the need, viability, financing and cost-effectiveness of the proposed project and offers received takes place at various levels in the Government. If there is a good reason why the project should not be undertaken, then the time to object is at the time when the same is under consideration and before a final decision is taken to undertake the project. If breach of law in the execution of the project is apprehended, then it is at the stage when the viability of the project is being considered that the objection before the appropriate authorities including the court must be raised. We would expect that if such objection or material is placed before the Government, the same would be considered before a final decision is taken. It is common experience that considerable time is spent by the authorities concerned before a final decision is taken regarding the execution of a public project. This is the appropriate time when all aspects and all objections should be considered. It is only when valid objections are not taken into account or ignored that the court may intervene. Even so, the court should be moved at the earliest possible



opportunity. Belated petitions should not be entertained."

15. It is submitted that in a public project of this kind where a sum of almost Rs 3500 crores have been expended by the State exchequer, a PIL Petitioner cannot be permitted to come at the fag end of the project to challenge the constitution and institution of the project itself. It is submitted that this Court has heavily come down on PIL litigants who approach the court on belated stage after much public investment has gone into the project.

(ii) Writ Petition is not maintainable

16. It is respectfully submitted that the Writ Petition filed is completely not maintainable. The Writ Petition filed has interalia challenged the executive formulation of the Aadhaar Scheme. It is submitted that the subject matter of the writ petition being the Aadhaar Scheme and the UID Project is also the subject matter of a legislative process currently underway in Parliament. As on date, the National Identification Authority of India Bill (NIDAI) is pending consideration in Parliament. On 8<sup>th</sup> October, 2013, the Government of India has formulated certain amendments to the Bill which will now be placed in Parliament. In these circumstances, the challenge to the UID Project and Aadhaar Scheme cannot be entertained at this stage and is completely not maintainable.

- 17.<sup>15</sup> It is well settled that the provisions of a Draft Bill, before it is enacted cannot be challenged. It is submitted that the executive formulation of the Aadhaar Scheme and the legislative formulation in process is *para materia* and, therefore, a stand alone challenge to the executive order



and the UID Project without awaiting the outcome of the legislative process is a premature exercise and ought not to be permitted in the interest of justice. It is submitted that if the legislation in this regard is passed, the writ petition filed will become infructuous and it will be a futile and academic exercise to answer the questions raised in the writ petition.

18. It is further well settled that this Hon'ble Court does not decide academic issues which do not arise for consideration. It is submitted that in the eventuality of the law being framed, the questions raised in the writ petition would have only academic value and the law made by Parliament would have to be specifically put in challenge to determine the legality thereof. Therefore, it is submitted that in view of the matter being pending in Parliament, the present challenge is completely premature and not maintainable.

(iii) Writ Petition raises plain and simple policy issues

19. It is further submitted that the issues raised in the present writ petition are plainly issues of policy which lie squarely in the domain of the Government and the PIL Petitioner cannot be permitted to determine what policy of identification would be better. It is submitted that the Aadhaar Scheme has been formulated by a considered process which has evolved from 1993 and several high-powered committees, including the EGoM and the Cabinet Committees. The benefits of the Aadhaar Scheme to the individuals in general and also the benefits to the Government in reaching out to the concerned individuals with subsidies and other social programmes have been outlined hereinafter.



20. It is submitted that such policy initiatives cannot be questioned in a PIL merely because the PIL Petitioner feels that there is some other way of making available Government schemes and benefits.

## II. SUBMISSIONS IN BRIEF

21. The Writ Petition filed has primarily raised the following broad contentions

- (i) The Aadhaar Scheme violates fundamental rights under Article 14 and Article 21 of the Constitution;
- (ii) That the Executive has no power under the Constitution to formulate the Aadhaar Scheme and the UIDAI project in the absence of legislative sanction;
- (iii) The Aadhaar Scheme does not ensure security of data of individuals and that the insecurity of the data may pose security threats to the country.
- (iv) Aadhaar scheme infringes on privacy of the individual.

22. It is respectfully submitted that all the above contentions are entirely baseless misconceived and have been raised without at all understanding and appreciating the scope, background and the constitutional foundation of the UIDAI project and the contours of Article 21 and in particular, the Right to Identity which is a facet of Article 21. Before answering each of the above issues it is necessary to appreciate the jurisprudential basis and the Constitutional genesis of the concept of right to Identity and its particular importance and relevance in our country.

- (i) The Right to Identity, an integral facet of Article 21



23. The United Nations Universal Declaration of Human Rights, 1948, which is the Magna Carta for human rights jurisprudence, in Article 6 recognizes the Right to Identity in the following words:-

"Everyone has the right to recognition everywhere as a person before the law"

24. It is submitted that this right of recognition and identity is a fundamental right and a facet of Article 21. From birth, each individual has the right to have an identity. The identity of an individual is the assertion of his or her existence in a society. It is also a matter of recognition of their individuality. It is submitted that having an identity is a fundamental human right which allows each individual the ability to enjoy all of their rights. A person without an identity will be invisible in eyes of society and law will not benefit from protection and social services essential to their development.

25. The right to identity consists in the legal and social acknowledgement of a person an essential condition for preserving a person's individual and collective dignity. The Convention on the Rights of Child (1989) also, emphasizes the right to identity.

(ii) The relevance and importance of Right to Identity in the Indian Context

26. It is submitted that the in a country like India, where substantial percentage of population lives below BPL, securing identity was a tremendous challenge to this vast populace.
27. For instance the number of persons with birth certificates, voter cards and passport is far from satisfactory.



28. In India, the inability of a person to prove his identity has been one of the biggest barriers which may have prevented persons from all strata of society to access governmental benefits, subsidies as well as to prove their identity in public as well as private sector. There was no nationally-accepted verified identity proof which could be used. On every occasion, whenever an individual tried to access a benefit or a service, it was required that a full cycle of identity verification was carried out. Moreover, different service providers had different requirements in the documents which were required as a result of which proving of identity was a challenging task.
29. Further, while weak identity systems cause the individual to miss out on benefits and services, it also makes it difficult for the government to account for money and resource flows across a country. In addition, it complicates government efforts to account for residents during emergencies and security threats.
30. It is submitted that Article 21 of the Constitution mandates the State to ensure the well-being and dignity of an individual. As stated earlier one of the determinative factor in an individual's well-being in a country is whether their identity is recognized in the eyes of the Government. The lack of identity is especially detrimental to the poor and under-privileged who live in India on social, economical and political periphery.
31. In this background, making available a standardized, reliable tamper proof and cross board identification to the people of India remained a serious challenge to the State. The lack of credible identity to a person



apart from being an infraction of the basic fundamental and human right of identity also created a situation where the State and its instrumentalities were seriously handicapped in ensuring that its welfare schemes actually reached the intended beneficiaries. There was a serious crisis and a pressing necessity in evolving a broad based and secure system of identity.

32. The *UIDAI Strategy Overview* published in April, 2010, brings out this peculiar situation in India about lack of nationally-accepted identity verification mechanism. Copy of the UIDAI Strategy Overview is annexed hereto and marked as ANNEXURE R-1 (Pages 66 to 109 Pages).
33. In the Executive Summary, it is stated that the duplication of effort and 'identity Silos' increase overall costs of identification and cause extreme inconvenience to individuals. It is further stated that this approach was especially unfair to India's poor and under-privileged residents who usually lack identity documentation and find it difficult to meet the costs of multiple verification processes (Pages ..... to Pages). In Paragraph 4 of the Executive Summary, it is inter alia stated as follows:-

" There are clearly immense benefits from a mechanism that uniquely identifies a person and ensures instant Identity verification. The need to prove identity only once will bring down transaction costs for the poor. A clear identity number would also transform the delivery of social welfare programs by making them more inclusive of communities now cut off from such benefits due to their lack of identification. It would enable the government to shift from indirect to direct benefits and help verify whether the intended beneficiaries actually receive funds/subsidies.

A single universal identity number will also be transformational in eliminating fraud and duplicate identities since individuals will not longer be able to represent themselves differently to different agencies.



This will result in significant savings to the state exchequer."

34. It is respectfully submitted that the Aadhaar Project was conceived and designed to address this crucial problem of lack of identity and to improve the delivery mechanisms of the State in reaching out to the underprivileged masses of the country.

(iii) No violation of fundamental rights

35. It is respectfully submitted that there is no infraction of any fundamental rights as alleged or at all. It is submitted that the allegation that the Aadhaar Scheme violates Article 21 and the right to privacy is a completely unfounded, baseless and misconceived argument.
36. It is submitted that the UIDAI Project and the Aadhaar Scheme is a giant leap forward in securing the right to identity enshrined under Article 21 of the Constitution. It is submitted that as pointed out hereinbefore, the Aadhaar Project was, inter alia, conceived and designed to address the mammoth and crucial problem of lack of identity in the country which was crippling the delivery mechanisms of the State in its reaching to the intended beneficiaries. The social welfare programmes initiated by the Government did not make the desired impact because of the lack of beneficiaries' identification and also because of duplication and fake identities prevailing in the country. In this background, a single universal identity system was conceived as a transformational step in eliminating fraud and duplicating identities. It is, thus, submitted that the Aadhaar Scheme is a great boost to providing and boosting identity of persons thereby fortifying the right under Article 21.



37. The Petitioner has however contended that the Aadhaar Scheme is mandatory and several service providers link the delivery services to the Aadhaar number. This, it has been contended, is violative of Article 14 and 21 (*see para 8M of the writ petition*). It is respectfully submitted that such an allegation is completely misconceived and is myopic argument. Firstly, the enrollment for getting an of Aadhaar number by the residents is purely on a voluntary basis. The scheme itself does not coerce or mandate any individual to part with their biometric information. The Project is purely on a voluntary basis.
38. It is submitted that the linkage of delivery mechanism of the State to the Aadhaar Scheme is a well-thought of reasoned and a considered policy decision of the Government so as to reach out to the maximum number of correct and true beneficiaries and make optimum and best utilization of the welfare schemes of the State. Such linkage of welfare schemes to the Aadhaar Scheme cannot be said to be arbitrary, illegal or unreasonable. It is submitted that the linkage of Aadhaar number to other welfare schemes of the Government is going to introduce a transformational change in making available such welfare schemes directly to the intended beneficiaries whilst eliminating fake and duplicate identities. It will cut costs of the national exchequer and, as a matter of fact, would enhance the standard and quality of living of the people of India. Such a policy of the Government cannot be said to be arbitrary or illegal. Such a policy is also in line with the Directive Principles of the State Policy and not at all violative of any fundamental rights or any provision of the Constitution.
39. It is submitted that an individual living in the societal context needs to have identity for a variety of reasons in his interaction with society and



the State. For instance, if a person was to apply for a job, a certain amount of identification of that person would be demanded by the employer; Similarly, if a person has to travel abroad a passport identification is necessary. A ration card is required to draw food grain and other consumables at a Public Distribution outlet, a job card is essential under MGNREGA and even a banking transaction requires a passbook/ debit card. . Thus, to access benefits or rights provided by the State if an identity system is provided, such provision of an identity system per se cannot lead to the conclusion that the Right to Privacy or Right under Article 21 is violated. Such an argument is completely misconceived as the State does not coerce any person to avail of an identity. However, if the State prescribes an identity mechanism to avail to certain services or to exercise certain rights, such an identity system cannot be said to be arbitrary, illegal or unreasonable. Further, a transparent and a tamper proof identity system in the country would count for better governance which is also a facet of Article 21. It is well known that beneficiary lists of a Government welfare program are riddled with fake and duplicate entries. Use of multiple ID documents and the ease of getting them more than once have contributed to this problem.. Aadhaar is the only ID which cannot be obtained more than once by an individual. It is the only ID which is compatible with computerization, can be authenticated on-line and help to detect fakes and duplicates. The use of Aadhaar by Government and private agencies is in larger public interest. Even for individuals Aadhaar brings convenience.. For one everyone can get Aadhaar irrespective of age, income or any other criteria. Aadhaar is nationally valid. By virtue of being a digital ID it does not have to be carried in person, it cannot be lost or damaged, it



can be easily updated and can be used online to access e-Government services. In short Aadhaar empowers both the Government and the resident.

40. In this background, it is respectfully submitted that there is no merit or substance in the contention that the UIDAI project violates Article 21.

(iv) The Executive is empowered under Article 73 of the Constitution to institute the UIDAI project and the Aadhaar Scheme

41. It is submitted that the contention of the Petitioners that the UIDAI project is ultra vires as it is without legislative sanction is completely misconceived (See para 8A of the Writ Petition). It is submitted that the argument overlooks the scope and ambit of Article 73 of the Constitution. It is submitted that the executive power of the State is co extensive with legislative power. The issue as to whether an executive can, by way of an executive order, formulate a policy even when a Bill is pending before the House, was considered in **Rev. Fr. Joseph Valamangalam & Others vs State of Kerala; AIR 1958 Kerala 290**, where it was held that the legislature is in the process of making a law governing the matters covered by the policy/orders, does not in any manner affect the executive power of the State in respect of such matters until the law is actually made. (Also see *Ram Jawaya Kapur, Rai Sahib vs State of Punjab; AIR 1955 SC 549*, *Sangawan Col A.S. vs Union of India; AIR 1981 SC 1545*)

42. It is submitted that where the Constitution does not require an action to be taken only by legislation or there is no existing law to fetter the executive power of the Union or the State as the case may be, the Government would not only be free to take such action by an executive order or to lay down a policy for the making of such



executive orders as occasion arises, but also to change such orders or the policy itself as often as the government so requires subject to the condition that such change must be made in the exercise of a reasonable discretion and not arbitrarily, the making or changing of such order is made known to those concerned and it complies with Article 14, so that persons equally circumstanced are not treated unequally. (Also see *J.R. Raghupathy vs State of A.P.* (1988) 4 SCC 364). This notwithstanding the collection, processing and handling of sensitive personal data is covered under the IT Rules 2011 which fall under the Information Technology Act 2000. The Act defines biometrics, " .... The technologies that measure and analyse human body characteristics, such as 'finger prints', 'eye retina' and 'irises', 'voice pattern', 'facial pattern', 'hand measurements' and 'DNA' for authentication purposes." It is submitted that there exists a legal framework in the form of IT Act 2000 and Rule framed thereunder which not only defines what constitute sensitive personal data but also provides statutory safeguards in the form of aforesaid Rules and imposes penalties in terms of compensation and/or imprisonment terms for violating provisions of law. The Government is also in the process of further strengthening this legal framework with the help of recently finalised draft National ID Authority Bill.

- (v) Full proof measures in place to ensure security and integrity of the data collected

43. The contentions of the Petitioner in Para 8 that data collected of individuals under the UIDAI project is not secure is completely false and erroneous. It is submitted that The UIDAI has taken all necessary safeguard measures spanning from providing standardized software that encrypts entire data even before saving to any disk,



protecting data using tamper proofing, identifying every one of the operators in "every" enrolment, identifying every one of thousands of machines using a unique machine registration process, which ensures every encrypted packet is tracked.

44. The data collected during enrolment using UIDAI provided software ensures that the resident data including raw biometrics is encrypted using strong encryption technologies before even saving to any disk.
45. The Data collection software, termed as the Enrolment Client, is created and managed centrally by the UIDAI. Any user of the client needs to authenticate each enrolment with a biometric sign off, a highly secure confirmation. The biometric Information is encrypted and then stored. Hence the operator has no access to this information. The encryption system follows a private key/public model. The private key is available only with UIDAI at the processing location called the Central Identities Data Repository (CIDR). Hence, even if data packets are lost or stolen, the biometric information regarding the same cannot be accessed and hence cannot be misused. It is submitted humbly that the Central and state government bodies, have, from time to time, collected biometric information from residents, and yet no system in the past has shown such a high degree of focus on the data security requirements from the start to the finish as has the UIDAI.
46. The biometrics available with UIDAI are not shared with anyone. Only a 'Yes/No' response is given at the time of biometric authentication of the person. UIDAI has an active data security policy that addresses all aspect of data collection, data handling and data storage. It is denied that the biometric information used can be accessed or used without any protection to the individual or that it can fall in the hands of



foreign Governments. The security and integrity of the data have been enshrined in the UIDAI Strategy.

47. It is submitted that UIDAI has taken full proof measures to ensure end-to-end security of resident data, spanning from full encryption of resident data at the time of capture, tamper resistance, physical security, access control, network security, stringent audit mechanism, 24x7 monitoring, and measures such as data partitioning and data encryption within UIDAI controlled data centres. In particular, at the UIDAI enrolment centres and field operations level, following safeguards have been implemented:

- i. UIDAI has provided standard enrolment software for all its registrars to ensure uniformity of enrolment data capture and processes.
- ii. UIDAI has mandated all operators/supervisors to themselves have a and also be trained and certified as operator/supervisor before they can start enrolling.
- iii. Every enrolment packet is biometrically signed by operator ensuring traceability and non-repudiation (repudiation - deny the authenticity of one's signature).
- iv. Every packet is reviewed by a supervisor for data quality (review audits are captured electronically) and signed as required which means every enrolment is traceable in terms of "who", "when", "where", "under which agency", "under which registrar", "who reviewed it", etc.
- v. Data collected during enrolment using UIDAI provided software ensures that the resident data including raw biometrics is encrypted using strong asymmetric encryption technologies before even saving to disk. It is to be noted that raw biometrics is NEVER stored anywhere without encryption.
- vi. UIDAI provided enrolment software uses standard, best in class, cryptographic techniques while storing resident data on field enrolment stations. It uses, encryption based on PKI (which is an asymmetric public/private key encryption scheme) which means



that no one can decrypt and misuse the data, even if they are in possession of and enrolment packet.

vii. Additional metadata such as "how long operator spent on demographic data screen", "how many times a fingerprint was captured", "how many corrections were done", etc. are collected as part of every enrolment packet for analysis of operator actions and performance. This data is used for providing continuous improvement feedback on data quality to the registrars and enrolling agencies using UIDAI's business intelligence (BI) platform.

48. During transit of the data from enrolment stations on the field to UIDAI data centres, following steps are ensured Firstly, every enrolment data packet is "always" stored in PKI encrypted, tamper proof files and are never decrypted or modified during transit. Further the enrolment data is "never", decrypted until it is reached within UIDAI's data centre's secure production zone.

49. It is submitted that Usage of strong asymmetric encryption technologies used to encrypt every resident's data packet ensures that no agencies or persons can access, modify, or misuse the resident data during field enrolment or in transit to the UIDAI data centre. The arguments that private parties may access or sell or misuse resident data is completely without any basis. The encryption technology used is 2048 bit encryption which is the strongest available encryption and it is impossible (it takes several billion years!) to decrypt and extract any information even if enrolment packets are accessible during transit to UIDAI data centre. A short power point presentation on the security of the data is annexed hereto and marked as ANNEXURE R-2 (Pages 110. to 113).



50. It is thus submitted that contentions about the security and integrity of the data are entirely misconceived.

III. HISTORICAL EVOLUTION OF THE POLICY OF THE GOVERNMENT TO PROVIDE IDENTITY

51. It is submitted that the writ petition fails to appreciate the historical background, the context and the evolution of the policy of the Government to provide identity and the circumstances in which the Unique Identification Authority of India was formed.
52. In 1993, the Government of India undertook the effort of providing clear identity to residents with the issue of Photo Identity Cards by the Election Commission. These Election Identity Cards are issued by the Election Commission to eligible electorate over the age of 18 years.
53. Thereafter, an attempt was made in the year 2003 to evolve a Multi-purpose National Identity Card which was introduced in certain parts of the country on a pilot basis.
54. The Unique Identification Project was initially conceived by the Planning Commission in the year 2006 as an initiative that would provide a clear and Unique Identification number for each resident across the country. Copy of the relevant extracts of the Report is annexed hereto and marked as **ANNEXURE R-3 (Pages 114 to.116)**.
55. On 3<sup>rd</sup> March, 2006 the Department of Information Technology, Ministry of Communication & Information Technology, gave its approval for the Project titled Unique Identification for BPL Families. This project was to be implemented by the NIC over the period of 12 months. Copy of the approval to Project of Unique Identification for



BPL Families is annexed hereto and marked as ANNEXURE R-4 (Pages 117 to 117).

56. A Processes Committee was also set up for updation, modification of this Project on 3<sup>rd</sup> July, 2006. This Committee prepared Paper known as "Strategic Vision on the UID Project" copy of which is annexed hereto and marked as ANNEXURE R-5 (Pages 118 to 118)
57. The Committee, inter alia, observed that UID Authority should be created by an executive order under the aegis of the Planning Commission to ensure pan-departmental and neutral identity for the Authority.
58. An Empowered Group of Ministers (EGoM) was set up with the approval of the Prime Minister to collate two schemes – the National Population Register under the Citizenship Act, 1955, and the Unique Identification Number Project of the Department of Information Technology. The EGoM was also empowered to look into the methodology and specific milestones for early and effective completion of the Project and take a final view on these Projects. This EGoM was constituted on 4<sup>th</sup> December, 2006. Copy of the constitution and Terms of Reference of the EGoM is annexed hereto and marked as ANNEXURE R-6 (Pages 139 to 139.)
59. The first meeting of the EGoM was held on November 27<sup>th</sup>, 2007. It recognized the need for creating an identity related resident database, regardless of whether the database is created based on a de-novo collection of individual data or is based on already existing data such as the voter list. It also recognized that there is a crucial and imperative need to identify and establish an institutional mechanism



that will "own" the database and will be responsible for its maintenance and updating on an ongoing basis, post its creation. Copy of the Minutes of the Meeting dated 27.11.2007 is annexed hereto and marked as **ANNEXURE R-7 (Pages 140 to 146)**

60. The second meeting of the EGoM was held on January 28<sup>th</sup>, 2008. It decided on the strategy for the collection of NPR and UID. Inter alia, the proposal to establish UID Authority under the Planning Commission was approved. Copy of the Minutes of the Meeting dated 28.1.2008 is annexed hereto and marked as **ANNEXURE R-8 (Pages 147 to .154)**

61. The third meeting of the EGoM was held on August 7<sup>th</sup>, 2008. The Planning Commission had placed before the EGoM a detailed proposal for setting up the UIDAI. The meeting decided that certain issues raised by the members with relation to the UIDAI would need to be examined by an official level committee. It referred the matter to a Committee of Secretaries to examine and give its recommendations to the EGoM to facilitate a final decision. Copy of the Minutes of the Meeting dated 07.08.2008 is annexed hereto and marked as **ANNEXURE R-9 (Pages 155 to 163)**.

62. Subsequent to the Committee of Secretaries recommendations, the fourth meeting of the EGoM was held on November 4<sup>th</sup>, 2008. The recommendations of the Committee of Secretaries was presented to the EGoM and the following decisions were taken:

- a) Initially the UIDAI may be notified as an executive authority, and investing it with statutory authority could be taken up for consideration later at an appropriate level.



- b) UIDAI may limit its activities to the creation of the initial database from the electoral roll/EPIC data. UIDAI may however additionally issue instructions to agencies that undertake creation of databases to ensure standardization of data element.
- c) UIDAI will take its own decisions as to how to build the database.
- d) UIDAI would be anchored in the Planning Commission for five years after which a view would be taken as to where the UIDAI would be located within Government.
- e) Constitution of the UIDAI with a core team of 10 personnel at the central level and directed the Planning Commission to separately place a detailed proposal with the complete structure, rest of staff and organizational structure of UIDAI before the Cabinet Secretary for his consideration prior to seeking approval under normal procedure through the DOE/CCEA.
- f) Approval to the constitution of the State UID Authorities simultaneously with the Central UIDAI with a core team of 3 personnel.
- g) December 2009 was given as the target date for UID to be made available for usage by an initial set of authorized users.
- h) Prior to seeking approval for the complete organizational structure and full component of staff through DoE and CCEA as per existing procedure, the Cabinet Secretary should convene a meeting to finalize the detailed organizational structure, staff and other requirements.



Copy of the Minutes of the Meeting dated 04.11.2008 is annexed hereto and marked as **ANNEXURE R-10 (Pages 164 to.173)**

63. Subsequently, on January 22<sup>nd</sup>, 2009, the Cabinet Secretary, in pursuance of the decisions of the Empowered Group of Ministers, considered the proposal submitted by the Department of Information Technology regarding the governance structure and recommended that
- a) The notification for constitution of the UIDAI should be issued immediately.
  - b) A High Level Advisory, Monitoring and Review Committee headed by Deputy Chairman, Planning Commission to be constituted to oversee the work of the authority.
  - c) A Member, Planning Commission, or the Secretary, Planning Commission, may be also assigned the task of looking after the work proposed of the Chief UID Commissioner.
  - d) Core Team to be out in place.

Copy of the letter dated 22.1.2009 is annexed hereto and marked as **ANNEXURE R-11 (Pages 174 to 174)**

64. In pursuance of the Empowered Group of Ministers' fourth meeting dated November 4<sup>th</sup>, 2008, the Unique Identification Authority of India was constituted and notified by the Planning Commission on January 28<sup>th</sup>, 2009, as an attached office under the aegis of Planning Commission with an initial core team of 115 officials. The role and responsibilities of the UIDAI was laid down in this notification. The UIDAI was given the responsibility to lay down plan and policies to



implement UID scheme, and shall own and operate the UID database and be responsible for its updation and maintenance on an ongoing basis. Copy of the Gazette Notification dated 28.01.2009 constituting UIDAI as an Attached Office of the Planning Commission, Government of India, is annexed hereto and marked as ANNEXURE R-12 (Pages 175 to 180).

65. Subsequently, on July 2<sup>nd</sup>, 2009, Shri Nandan Nilekani was appointed as the Chairman of the UIDAI. Shri Nikekani assumed charge on 23<sup>rd</sup> July, 2009, and since then the UIDAI has started functioning.

66. The Government thereafter constituted a Cabinet Committee on Unique Identification Authority of India vide its order No. 1/11/6/2009 dated 22<sup>nd</sup> October, 2009. The functions of this Committee, as per this notification are to consider all issues relating to the Unique Identification Authority of India including the organization, plans, policies, programmes, schemes, funding and methodology to be adopted for achieving the objectives of that Authority. Copy of the Notification dated 22<sup>nd</sup> October, 2009, is annexed hereto and marked as ANNEXURE R-13 (Pages 181 to 182 ).

#### V. THE AADHAAR SCHEME

67. The Aadhaar Scheme is the unique identification project launched by the Government of India and is being implemented by the Unique Identification Authority of India (UIDAI). It is submitted that, Aadhaar is a 12-digit unique number which the UIDAI issues to all residents in India on a voluntary basis. The number will be stored in a centralized



database and linked to the basic demographic and biometric information – photograph, ten fingerprints and both iris – of each individual. It is verifiable in an online, cost-effective way. It is unique and robust enough to eliminate the large number of duplicate and fake identities in Government and private databases. The random number generated is devoid of any intelligence and does not profile people based on caste, religion, income, health and geography.

68. The UIDAI enrolls residents through the multi-registrar enrollment model using verification processes prescribed by it as this will ensure that the data collected is clean right from the beginning of the program. It is further submitted that much of the poor and underserved population lack identity documents and the UID may be the first form of identification they will have access to. The Authority to ensure that the Know Your Resident (KYR) standards do not become a barrier for enrolling the poor has devised suitable procedure to ensure their inclusion without compromising the integrity of the data. The NPR is an important partner registrar in the enrollment process.

(i) *The Salient features of the Aadhaar Scheme*

69. The broad features of the Scheme have been outlined in the Executive Summary of *UIDAI Strategy Overview* published in April, 2010, which, inter alia, states as follows:-

" The purpose of the UIDAI is to issue a unique Identification number (UID) to all Indian residents that is (a) robust enough to eliminate duplicate and fake identities, and (b) can be verified and authenticated in an easy, cost-effective way. The UIDAI's approach will keep in mind the learning's from the government's previous efforts at issuing identity.

Features of the UIDAI model



**The Unique Identification number (UID) will only provide identity:** The UIDAI's purview will be limited to the issue of unique identification numbers linked to a person's demographic and biometric information. The UID will only guarantee identity not rights, benefits or entitlements.

**The UID will prove Identity, not citizenship:** All residents in the country can be issued a unique ID. The UID is proof of identity and does not confer citizenship.

**A pro-poor approach:** The UIDAI envisions full enrolment of residents, with a focus on enrolling India's poor and underprivileged communities. The Registrars that the UIDAI plans to partner with – the NREGA, RSEY and PDS – will help bring large numbers of the poor and underprivileged into the UID system. The UID method of authentication will also improve service delivery for the poor.

**Enrolment of residents with proper verification:** Existing identity databases in India are fraught with problems of fraud and duplicate/ghost beneficiaries. To prevent this from seeping into the UIDAI database, the UIDAI plans to enroll residents into its database with proper verification of their demographic and biometric information. This will ensure that the data collected is clean from the start of the program.

However, much of the poor and underserved population lack identity documents and the Aadhaar may be the first form of identification they have access to. The UIDAI will ensure that the Know Your Resident (KYR) standards don't become a barrier for enrolling the poor, and will devise suitable procedures to ensure their inclusion without compromising the integrity of the data.

**A partnership model:** The UIDAI approach leverages the existing infrastructure of government and private agencies across India. The UIDAI will be the regulatory authority managing a Central Identities Data Repository (CIDR), which will issue UIDs, update resident information, and authenticate the identity of residents as required.

In addition, the UIDAI will partner with agencies such as central and state departments and private sector agencies who will be 'Registrars' for the UIDAI. Registrars will process UID applications, and connect to the CIDR to de-duplicate resident information and receive UID numbers. These Registrars can either be enrollers, or will appoint agencies as enrollers, who will interface with people, seeking UID numbers. The Authority will also partner with service providers for authentication.



**The UIDAI will emphasize a flexible model for Registrars:** The Registrars will retain significant flexibility in their processes including issuing cards pricing, expanding KYR (Know Your Resident) verification, collecting demographic data on residents for their specific requirements and in authentication. The UIDAI will provide standards to enable Registrars maintain uniformity in collecting certain demographic and biometric information, and in basic KYR. These standards have been finalized by the Demographic Data Standards and Verification Procedures Committee and Biometric Standards Committees which was constituted by the UIDAI constituted.

**Enrolment will not be mandated:** The UIDAI approach will be a demand-driven one where the benefits and services that are linked to the UID will ensure demand for the number. This will not, however, preclude governments or Registrars from mandating enrolment.

**The UIDAI will issue a number not a card:** The UIDAI's role is limited to issuing the number. The number may be printed on the document/card that is issued by the Registrar.

**The number will not contain intelligence:** Loading intelligence into identity numbers makes the susceptible to fraud and theft. The UID will be a random number.

**The UIDAI will only collect basic information on the resident:** The UIDAI will seek the following demographic and biometric information in order to issue a UID number:

- ❖ Name
- ❖ Date of Birth
- ❖ Gender
- ❖ Father's/Husband's/Guardian/s name and UID number (optional for adult residents)
- ❖ Mother's/Wife's/Guardian's name and UID number (optional for adult residents)
- ❖ Introducer's name and UID number (in case of lack of documents)
- ❖ Address
- ❖ All ten fingerprints, photograph and both iris scan

**Process to ensure no duplicates:** Registrars will send the applicant's data to the CIDR for de-duplication. The CIDR will perform a search on key demographic fields and on the biometrics for each new enrolment to ensure that no duplicates exist.

The incentives in the UID system are aligned towards a self-cleaning mechanism. The existing patchwork of



multiple databases in India gives individuals the incentive to provide different personal information to different agencies. Since de-duplication in the UID system ensures that residents have only one chance to be in the database, individuals will provide accurate data. This incentive will become especially powerful as benefits and entitlements are linked to the UID.

**Online authentication:** The UIDAI will offer a strong form of online authentication where agencies can compare demographic and biometric information of the resident with the record stored in the central database. The Authority will support Registrars and agencies in adopting the UID authentication process and will help define infrastructure and processes they need.

**The UIDAI will not share resident data:** The UIDAI envisions a balance between 'privacy and purpose' when it comes to the information it collects on residents. The agencies may store the information of residents they enroll if they are authorized to do so, but they will not have access to the information in the UID database. The UIDAI will answer requests to authenticate identity only through a 'Yes' or 'No' response.

**Technology will undergrid the UIDAI system:** Technology system will have a major role across the UIDAI infrastructure. The UID database will be stored on a central server. Enrolment of the resident will be computerized and information exchange between Registrars and the CIDR will be over a network. Authentication of the resident will be online. The Authority will also put system in place for the security and safety of information."

70. The benefits of the scheme are also stated in the said Strategic Overview, which is reproduced hereunder for the sake of convenience:-

**"Benefits**

**For residents:** The UID will become the single source of identity verification. Once residents enroll, they can use the number multiple times – they would be spared the hassle of repeatedly providing supporting identity documents each time they wish to access services such as obtaining a bank account, passport, driving license, and so on.

By providing a clear proof of identity, the UID will also facilitate entry for poor and underprivileged residents into the formal banking system and the opportunity to



avail services provided by the government and the private sector. The UID will also give migrants mobility of identity.

**For Government:** Eliminating duplication under various schemes is expected to save substantial money for the government exchequer. It will also provide governments with accurate data on residents, enable direct benefit programs, and allow government departments to coordinate investments and share information."

71. The UIDAI Project is perhaps the first project in the world to implement a biometric based unique identity system. It is submitted that India will be the first country to implement a biometric-based unique ID system for its residents on such a large scale. The UID will serve as a universal proof of identity allowing residents to prove their identity anywhere in the country. It will give the government a clear view of India's residents, enabling it to target and deliver services effectively, achieve greater returns on social investments, and monitor money and resource flows across the country.

72. It is submitted that the creation of the UIDAI coincides with growing social investment in India, a shift in focus to direct benefits, and with the spread of IT and mobile phones, which has made the public receptive to technology-based solutions. The UIDAI is committed to making this project a success. An initiative of this magnitude will also require the active participation of Central, State and Local Governments as well as public and private sector agencies across the country. With their support the project will help realize a larger vision of inclusion and development for India. It is submitted that the UIDAI Project is a giant leap forward in the task of achieving inclusive development in India.

(ii) *The present status of the legislative process*



73. The National Identification Authority of India Bill (NIDAI) was introduced in Parliament on 3<sup>rd</sup> December, 2010. Thereafter, the matter was referred to the Standing Committee which gave its Report on 13th December, 2011. Thereafter, the matter was considered by the concerned stake-holders. The Government, after due consultation with concerned Department, on 8<sup>th</sup> October, 2013 formulated certain amendments to the Bill which will be placed in Parliament.

#### VI. PARAWISE COMMENTS

74. The contents of Para 1 to 4 need no comment.
75. The contents of Para 5 are denied. It is denied that Government actions have violated fundamental rights of the Petitioners or the citizens or residents of India under Article 14 and 21 of the Constitution. It is submitted that the writ petition has been filed without appreciating and understanding the basic fact that making available identity to persons in a country is also a facet of Article 21. In fact, the United Nations Universal Declaration of Human Rights, 1948, in Article 6 categorically recognizes this right.
76. The contention that the scheme impinges on the numerous fundamental rights including right to privacy is denied. The UIDAI seeks only very basic data on demographic like name, age or date of birth, gender and postal address. In case of biometric data, the fingerprint scans and iris are essential to undertake the de-duplication of the identity to attain the objective of unique identification and ensuring sanctity of the number. It is submitted that UIDAI merely



provides an irrefutable identity to the holder and will be a powerful tool in allowing the person personal liberty by proving his identity. Provision of name, age, gender, address, photographs, biometric like thumb impression are age old practices of proving identity. UIDAI is only leveraging Information Technology to make their collection, storage and usage more accurate, secure, convenient, cost effective and amenable computerization.

77. Further, the inability to prove identity is one of the biggest barriers in preventing the poor in this country from accessing benefits and subsidies. The Aadhaar Scheme is an attempt to provide identity and is in fact a step forward in enhancing the life and dignity of persons as mandated by Article 21.
78. The contents of Para 6 are denied. It is denied that the actions of the Government adversely affect and harm citizens and residents across the country. The Government of India has undertaken the project with a view to making a transformational change in service deliver to genuine beneficiaries which shall only work to the betterment of the resident.
79. It is submitted that the Petitioner has styled this petition as PIL. However, the delay in approaching this court after 4 years from the start of the project has been completely unexplained. The writ petition is completely silent on the reason as to why the Petitioner has approached this court at a belated stage, more so when 53 crores of India's population have already enrolled for Aadhaar and almost Rupees four thousand crores expenditure have been incurred on the project. It is respectfully submitted that delay in approaching this



Hon'ble Court is fatal for the Petitioner and bonafide of the Petitioner in approaching this court at this belated stage are seriously in doubt. It is denied that there is a violation of basic human rights which has occurred. To the contrary, it is submitted that the project is a step forward in assuring and guaranteeing the fundamental and human rights on identity which is also recognized by the UN Universal Declaration of Human Rights.

80. The contents of Para 7 are denied. Under the Aadhaar Scheme, Unique Identification Numbers are assigned to residents of the country. The number is merely an identity infrastructure and does not entitle any person either for citizenship or any rights or entitlements or eligibility for any programme. The determination of rights or entitlements or eligibility remains within the domain of the respective service delivery organizations/Ministries. The letter clearly spells out that it is only a proof of identity and not citizenship.
81. It is also to be noted that the letter through which Aadhaar number is intimated to the resident, also clearly states that the Aadhaar number is not a proof of citizenship. The contention of the Petitioner regarding collection of personal biometric information without legal sanction and adequate safeguard through private agencies is denied. The Unique Identification Authority of India (UIDAI) has been set up and duly constituted as an Authority of the Government of India by an executive order by virtue of the powers under Article 73 of the Constitution of India as an "attached office" of the Planning Commission of India through a notification dated 28th January, 2009. As per the Gazette notification, the Authority has been given the responsibility to lay down plan and policies to implement UID Scheme, own and operate the UID database, be responsible for its updation and maintenance on an



ongoing basis. It is submitted that it is a settled position that powers of the Executive are co- extensive with the legislative power of the Government and that the Government is not debarred from exercising its executive power in the areas which are not regulated by specific legislation. Till the time such legislation is framed, the Authority can continue to function under the executive order issued by the Government and the scheme that may be prepared by the UIDAI. The Bill recently finalised by the Government is in the process of being presented to the Parliament. In any case *It is submitted that there exists a legal framework in the form of IT Act 2000 and Rules framed thereunder which not only defines what constitute sensitive personal data but also provides statutory safeguards in the form of aforesaid Rules and imposes penalties in terms of compensation and/or imprisonment terms for violating provisions of law.*

82. It is submitted that the UIDAI has taken necessary safeguard measures spanning from providing standardized software that encrypts entire data even before saving to any disk, protecting data using tamper proofing and ensuring every encrypted packet is tracked. The data collected during enrolment using UIDAI provided software ensures that the resident data including raw biometrics is encrypted using strong encryption technologies before even saving to any disk.
83. The Data collection software, termed as the Enrolment Client, is created and managed centrally by the UIDAI. Any user of the client needs to authenticate each enrolment with a biometric sign off, a highly secure confirmation. The biometric Information is encrypted and then stored. Hence the staff involved in enrollment has no access to



this information. The encryption system follows a private key/public model. The private key is available only with UIDAI at the processing location called the Central Identities Data Repository (CIDR). It is thus submitted that the data collected is tamper proof and completely secure.

84. The contents of Para 8A are denied. It is denied that the scheme is ultra vires as it is without legislative sanction. It is denied that the exercise of obtaining information alters fundamentally the relationship between citizen and State. It is denied that the databank can be exploited against the interest of the citizen/residents without the knowledge of the citizen/residents. It is submitted that the executive powers are co-existence with legislative powers under the scheme of Article 73 of the Constitution. It is, thus, submitted that the Government of India is constitutionally empowered to carry out the Aadhaar Scheme even when a Bill in respect of the same subject matter is pending before the House. Further the IT Act 2000 and Rules made thereunder are sufficient enough to regulate the collection, disclosure and use of sensitive personal data in the form of demographic and biometric information. It is further submitted that amendment to the laws regarding citizenship are not necessary as the Aadhaar Scheme is not proof of citizenship. Similarly, no amendment of the Constitution is required. It is denied that there is no limitation or guidance on the collection of biometric information or the procedure how it is to be collected. It is submitted that the information collection and storing exercise is tampered-proof exercise which has been undertaken applying the state-of-the-art technology regarding security of data. It is denied that the collection of personal biometric information impacts an autonomy of the individual. It is submitted that the Aadhaar Scheme is a voluntary



scheme and there is no compulsory mandate. It is denied that the actions of the Government violate Article 21 of the Constitution as alleged or at all. It is respectfully submitted that the petitioner tries to assail the instant subordinate legislation on the ground of malafide on the part of the Government. It is respectfully submitted that it is an established principle of law laid down by this hon'ble Court in a catena of judgement, that no legislation could be challenged on the ground of malafide on the part of the Government.

85. The contents of Para 8B are denied. *This notwithstanding the collection, processing and handling of sensitive personal data is covered under the IT Rule 2011 which fall under the Information Technology Act 2000. The Act defines biometric, " .... The technologies that measures and analyse human body characteristic, such as "finger prints", "eye retina" and " irises", " voice pattern", " facial pattern" , " hand measurement" and " DNA" for authentication purpose." It is submitted that there exists a legal framework in the form of IT Act 2000 and Rule framed there under which not only defines what constitute sensitive personal data but also provides statutory safeguards in the form of aforesaid Rules and imposes penalties in terms of compensation and/or imprisonment terms for violating provisions of law. The Government is also in the process of further strengthening this legal framework with the help of recently finalized draft National ID Authority Bill.*

86. It is denied that obtaining personal biometric information of an individual cannot be engaged in by the State without a valid law. It is denied that there is any violation of Article 21. It is denied that the State is not empowered to collect biometric information without



legislative backing. It is denied that without legislative backing the UIDAI Project and Aadhaar Scheme are ultra vires and void. It is denied that there is any infringement of the Fundamental Rights by use of Aadhaar for service delivery, by the state. On the contrary, once the fake and duplicate identities are removed from the system, and only the genuine beneficiaries get the entitled benefits, the State would have fulfilled its obligation towards its people in a much more effective manner.

87. The contents of Para 8C are denied. It is denied that there is no informed consent. It is submitted that the contention of the Petitioner that individuals are parting biometric information without informed consent is denied. It is submitted that the following consent of the individual is obtained at the time of enrolment into the UID system:

"I confirm that I have not enrolled earlier and information (including biometrics) provided by me to the UIDAI and the information contained herein is my own and is true, correct and accurate. I have no objection to the UIDAI sharing information provided by me to the UIDAI with the agencies engaged in delivery of public services including welfare services. I want the UIDAI to facilitate opening of a new Bank/Post Office account linked to my number and have no objection to sharing my information for this purpose with concerned Bank/Post Office."

It is denied that the data will be used against an individual in violation of the rights under Article 14 or 21 of the Constitution.

It is denied that this biometric information once obtained by the Government can be accessed and used without any protection to the individual. As a matter of policy the UIDAI does not share information without the explicit consent of the individual. It has introduced the e-KYC service which has made proof of identity and address entirely paperless, online, secure and consent



based. On authorization by the individual the UIDAI transfers his proof of ID and address data in a digitally signed and encrypted file to the service provider designated by the individual concerned to receive the file. Such point to point transfer of data brings unprecedented security, convenience and economy to an ID based transaction and safeguards the privacy of the individual in a manner never experienced before anywhere in the world besides putting each and every individual fully in control of his ID. By dispensing with the need to provide paper based document the e-KYC eliminates the possibility of misuse of ID at the front end while securing it at the backend. For the record the UIDAI never shares biometrics of an individual with any agency including as a part of e-KYC. This service is easy to use wherever there is mobile connectivity. It is denied that the information can fall into the hands of foreign Governments and it may already be transmitted to the foreign Governments clandestinely. It is important to stress the futility of attempts in accessing or selling or misusing resident data by any agencies. The 2048 bit encryption is perhaps the strongest available encryption and it is impossible (it takes several billion years!) to decrypt and extract any information even if enrolment packets are accessible. The petitioner's apprehension that data being collected by State and stored in a databank for use at a future date against an individual is denied as it is fictitious and not based on any fact.



88. The contents of 8D are denied. It is denied that private parties can access sensitive personal biometric data of individuals or that private persons are benefitting from such data. It is submitted that the UIDAI only collects the basic information required to identify the person uniquely. Authentication "only" responds with a "yes/no" answer, not revealing any Personal Identifiable Information (PII) – such as name, address, date-of-birth, gender or photo. UIDAI acts as an enabler for the access to various welfare schemes of the Government by uniquely identifying the beneficiary. Hence the contention of the Petitioner that the collected information is of huge commercial value is mischievous and denied. It is submitted that the UIDAI is conscious of the responsibility cast upon it, and hence has taken adequate steps to ensure a secure system. As a matter of policy the UIDAI does not aggregate data. It does not add information fields to its data base by tracking or profiling individuals as and when they use Aadhaar and remains blind to the purpose of front end usage by a conscious system design. In fact, no system in the past has shown such a high degree of focus on the data security requirements from the start to the finish, as this project. It is not at all clear how the Petitioner has concluded that the data is going to be used commercially, and it is submitted that the fears in this regard are completely baseless. The apprehension of the petitioner that private parties may already be profiting from selling such data behind the back of the respondents is denied due the reason that the Data collected during enrolment using UIDAI provided software ensures that all the resident data including demographic and raw biometrics is encrypted using strong asymmetric encryption



technologies before even saving to disk. It is to be noted that raw biometrics is NEVER stored anywhere without encryption.

89. The contents of Para 8E are denied. It is denied that private parties are in the control of biometric information and it can be misused. It is submitted that data collected during enrolment using UID Software ensures that the resident's data, including biometric information, is encrypted technology before even it is saved to the disc. It is submitted that the encryption used is the strongest available encryption in the world and it is impossible to decrypt and extract any information by any operator. It is submitted that the private individuals tasked with the collection of information have no access to the demographic or biometric information so collected. It is denied that this information once obtained by the Government can be accessed and used without any protection to the individual. It is denied that the information can fall into the hands of foreign Governments and it may already transmitted to the foreign Governments clandestinely. A power point presentation and how the data is encrypted and the fool-proof security of the data has been annexed at **ANNEXURE R-2 (Pages ..... to.....)**. It is denied that there are no adequate checks and safeguards to secure the data and that private agencies have been permitted to garner personal biometric information without any technological or other safeguards. The IT Act 2000 and Rules framed thereunder provide statutory safeguards for use, storage and protection of individual's sensitive personal data.
90. The contents of Para 8F are denied. It is denied that any essential or core functions have been delegated to the private parties as alleged or at all. It is denied that the State has abdicated its role with regard



to welfare of individuals by allowing private entities to exercise control over an individual's biometric data. With regard to the private agencies being involved, it is submitted that data protection features have been included in the architecture of the UID project. It is also submitted that given the requirement of scale and targets for enrolment, one or two single entities cannot accomplish the mammoth task of enrolling millions of persons. Hence, as a conscious decision, approved by the government, enrolment is being done under the control and supervision of Registrars, including Registrar General of India (RGI), by hiring enrolment agencies (who are private agencies).

91. It is further submitted that there is no legal or constitutional prohibition in employing private entities provided the selection of such entities is done in a fair and transparent manner keeping the mandate of Article 14. It is submitted that to bring about efficiency and cost effectiveness, the state may, from time to time, engage private individuals and institutions to carry out a portion of the work on its behalf, through due process of tender or otherwise. It is submitted that like any project, the process of selection of private vendors has been open and transparent. It is pertinent to note that even the private entities are governed by the Law of the Land and are not exempted from it. It is also humbly submitted that UIDAI has strict monitoring mechanism to check the performance and functioning of the private parties involved in enrollment.

92. The contents of 8G are denied. It is denied that there is any privatization of biometric information of millions of residents. It is denied that the privatization of biometric information gives dominion and control to private entities of personal information of individuals. It is submitted that it has been incorrectly assumed by the Petitioner that



biometric information is in private hands. As brought out hereinbefore, the biometric information is securely encrypted at source and cannot be decrypted by the agency collecting the information. The data thereafter at all times remains under the control of the UIDAI and not that of any other public or private agency. It is denied that at a future date an individual's personal liberty, autonomy and privacy can be compromised by the private entity parting with this information for commercial gain. It is denied that the scheme does not ensure that the biometric information collected has not been replicated, copied, sold or retained by the private entity for private or future commercial gain. It is denied that privatization of biometric information poses enormous threat to national security and violates Article 21 of the Constitution. It is vehemently denied that the exercise has been undertaken by the Government in hasty, thoughtless manner and that the whole exercise is deeply flawed and violative of Article 14 of the Constitution.

93. The contents of Para 8(H) are denied. It is denied that there has been any commercial largess given to the private entities which would enrich private parties. It is denied that extremely valuable biometric information has fallen into the private hands. It is further denied that immense commercial worth of the biometric information is being captured on privately owned computers and databases over which the government has no control or exclusive access. It is denied that the information can be duplicated, replicated, transmitted or exploited by individuals working for the private entities. It is denied that the Government and the UIDAI have failed to perform their duty of ensuring that privately held biometric information is not susceptible to any type of misuse or exploitation by the parties collecting this



information. It is denied that the State has part with largess or has facilitated the collection of biometric information by private hands and is paying private entities without any tested technology or legal framework. It is denied that the impugned actions are palpably arbitrary and liable to be struck down. It may be noted that in view of the secured encryption of the biometric information, it is not possible for party possessed of this information to duplicate, replicate, transmit or commercially exploit this information. The 2048 bits encryption is the strongest available encryption and it is impossible to decrypt and extract any information. It is also to be noted that biometric is never stored at any juncture without encryption. UIDAI has also applied sophisticated technology to monitor every enrollment being done and tracks the enrollment data till it is received in the data centre, which enhances the security of the resident data.

94. The contents of 8(I) are denied. Security and privacy of data within Aadhaar system has been foundational and is clearly reflected in UIDAI's strategy, design and its processes throughout the system. At the cost of repetition to prove the robustness of the Security safeguards the following is again brought to the notice of the Hon'ble Court. At the enrolment centres and field operations level, following designs are implemented:

- i. UIDAI has provided standard enrolment software for all its registrars to ensure uniformity of enrolment data capture and processes.
- ii. UIDAI has mandated all operators to themselves have a Aadhaar and also be trained and certified as operator/supervisor before they can start enrolling.



- iii. Every enrolment packet is biometrically signed by operator ensuring traceability and non-repudiation (repudiation - deny the authenticity of ones signature).
- iv. Every packet is reviewed by a supervisor for data quality (review audits are captured electronically) and signed as required which means every enrolment is traceable in terms of "who", "when", "where", "under which agency", "under which registrar", "who reviewed it", etc..
- v. Data collected during enrolment using UIDAI provided software ensures that the resident data including raw biometrics is encrypted using strong asymmetric encryption technologies before even saving to disk. It is to be noted that raw biometrics is NEVER stored anywhere without encryption.
- vi. UIDAI provided enrolment software uses standard, best in class, cryptographic techniques while storing resident data on field enrolment stations. It uses, encryption based on PKI (which is an asymmetric public/private key encryption scheme) which means that no one can decrypt and misuse the data, even if they are in possession of and enrolment packet.
- vii. Additional metadata such as "how long operator spent on demographic data screen", "how many times a fingerprint was captured", "how many corrections were done", etc. are collected as part of every enrolment packet for analysis of operator actions and performance. This data is used for providing continuous improvement feedback on data quality to the registrars and enrolling agencies using UIDAI's business intelligence (BI) platform.



- viii. During transit of the data from enrolment stations on the field to UIDAI data centres, following should be noted:

Every enrolment data packet is "always" stored in PKI encrypted, tamper proof files and are never decrypted or modified during transit. Enrolment data is "never" decrypted until it is reached within UIDAI's data centre's secure production zone.

- ix. Usage of strong asymmetric encryption technologies used to encrypt every resident's data packet ensures that no agencies or persons can access, modify, or misuse the resident data during field enrolment or in transit to the UIDAI data centre.
- x. It is important to stress the futility of attempts in accessing or selling or misusing resident data by field agencies. The 2048 bit encryption is perhaps the strongest available encryption and it is impossible (it takes several billion years!) to decrypt and extract any information even if enrolment packets are accessible.
- xi. Within UIDAI's data centres (CIDR), following security aspects have been implemented:
- xii. Physical security outside and within data centres with access controls including biometric access control, physical caging, and 24x7 monitoring using cameras.
- xiii. Logical security by partitioning data centre into "zones" separating them using firewall and network intrusion detection and prevention systems.
- xiv. Complete isolation of Demilitarized Zones (DMZ), Partner DMZ, Staging, Production, and sub zones within production for biometric systems, quality check system, databases, etc.



- xv. Usage of HSM (Hardware Security Module) for key management, other standard security and data centre operations practices ensures that UIDAI's data centres are best in class.
- xvi. All data "access" is controlled using common access control scheme managed within internal LDAP (Light Weight Directory Access Protocol) and is audited.
- xvii. Multi-vendor firewall, Network Intrusion Detection and Prevention systems, virus and malware detection systems are deployed. Usage of multi-vendor systems ensures that in the eventuality of any security compromise, it is limited to one zone.
- xviii. Biometric and non-biometric validation of "all" enrolment packet for authenticity of source, authenticity of operators, and overall validity of data.
- xix. Every sub-system including the three biometric de-duplication systems are separated by firewalls.
- xx. Data is "partitioned" across multiple security "zones", meaning "no" single database has all the resident data in completeness.
- xxi. Biometric data provided to biometric vendor systems (that are deployed within UIDAI data centres) are completely stripped of "any" Personal Identifiable Information (PII) means that none of the biometric sub-systems have any understanding of "whose" biometric it is that they are processing. This is similar to how examination papers are evaluated by removing any student identity data to ensure anonymity.
- xxii. Biometric systems deployed within UIDAI data centres are on separate sub networks separated by firewall ensuring that they



don't have access to any other internal systems nor have access to any external systems. It is fully isolated.

xxiii. The packets containing biometric after it has been used to de-duplicate and issue and Aadhaar, is archived in encrypted form and stored in a completely separated and logically disconnected long term storage system.

xxiv. Entire production zone has no access to outside networks such as Internet, implying that no data moves out of the network of UIDAI Biometric systems deployed within UIDAI data centres are on separate sub networks separated by firewall ensuring that they donot have access to any other internal systems nor have access to any external systems. It is fully isolated.

It is denied that in a haphazard and unreliable manner the respondent has collected data. It is denied that there is no secure manner in which respondent will store data collected. It is denied that the process of collecting data is porous with no reliable protocols due to the above mentioned safeguard measures followed by UIDAI

95. The contents of Para 8(J) are denied. It is denied that the agencies of the government will be able to track individuals on a real time basis or that this will be used for surveillance. The entire premise of the argument that the data is for surveillance purpose is completely baseless. The UIDAI has never stated that the data is for surveillance or any such purpose. The UIDAI purpose is to deliver direct benefits to the intended beneficiaries under its welfare scheme programmes and is not intended for any other purpose. By design the technology architecture of the UIDAI precludes profiling individuals for tracking their activities including purpose for which they may have used



Aadhaar. The draft NIDAI Bill finalized by the Government provides for a three member Identity Review Committee (IRC) to ascertain the extent and pattern of usage of the Aadhaar number. The report of this committee will be laid before each house of the parliament and the IRC itself would be appointed on the recommendation of a committee comprising of the Prime Minister, leader of opposition and a cabinet minister selected by the PM. The UIDAI itself is subject to audit by the Comptroller and Auditor General of India. Further the UIDAI is fully within the ambit the Right to Information Act. Clearly robust safeguards are being adopted to safeguard information related to Aadhaar and its usage.

96. The contents of Para 8(K) are denied. It is denied that the UIDAI Project results in invasion of privacy and violation of Article 21. It is denied that the Aadhaar number will be used for tagging, tracking and surveillance. It is denied that the Aadhaar number is liable to serve as key for tracking and surveillance. It is denied that the actions of the Government are violative of Article 21 or potentially can severe individual's privacy. It is submitted that the entire premises of the argument that the Aadhaar Scheme is a surveillance scheme is completely baseless and stems out from ignorance of scope, ambit of the UIDAI and the technology used in the UIDAI Project and Aadhaar Scheme. As a matter of policy and by design the UIDAI precludes itself from aggregating information arising from the use of Aadhaar, tracking and profiling individuals and the system by intent is blind to the purpose for which Aadhaar may be used at the front end by the resident. It is submitted that the Aadhaar Scheme is meant to improve the service delivery system. It is submitted that this Project



seeks to do away with fake identities who were earlier pilfering the benefits of several welfare schemes from reaching the intended beneficiaries of such schemes. The genesis of the problem of fakes and duplicates in fact lies in the practice of consumers of services providing different forms of identification alluded to by the petitioner and the use of Aadhaar is intended to tackle such misuse. It is submitted that the apprehension of the petitioner of the surveillance is a baseless imagination which in the guise of praying for stopping fictitious activity, indeed intends to hamper a well-conceived idea of the Government for a valid unique ID and an effective service delivery tool.

97. The contents of 8(L) are denied. It is denied that the actions of the Government undermine human dignity. As a matter of fact, as explained hereinabove, right of identity is a facet of Article 21 and that the Aadhaar Scheme is a step forward in ensuring right to identity and thereby fortifying Article 21. It is denied that the notion of dignity in an open society encompasses the right to services without identity. It is denied that the Project impinges on dignity by universalizing the requirement of possessing and using an Aadhaar number. It is humbly submitted that in a country like India, where large numbers of residents are living below the poverty line or are marginalized in other ways, there is a great thrust on welfare spending. Equally, the resources of the state are limited. Contrary to the contention that the project undermines human dignity, it seeks to provide to the vast magnitude of underprivileged residents, the benefits that the state intends to reach to them.

98. The contents of Para 8(M)(i) are denied. It is denied that there is coercion to part with biometrics. The Aadhaar number is merely



an identity infrastructure and does not entitle any person either for citizenship or any rights or entitlements or eligibility for any programme. The determination of rights or entitlements or eligibility remains within the domain of the respective service delivery organizations/Ministries. As a mere indicator of this exercise, it is submitted that in a short span of four years the UIDAI has enrolled over 53 crore individuals for and is operating over 25,000 enrolment centres across the country to enroll an additional 10 lakh persons per day. It is totally incorrect to assume that so many persons have enrolled under threat or coercion. It is submitted that it has never been nor shall be the intent of the Government to deny service to deserving beneficiaries. The UIDAI seeks to provide an identity to every resident of India with focus on delivery of social benefits. Its design enables it to be used wherever identity needs to be established. The authentication process (establishing identity to enable a transaction.) is electronic in nature. This lends itself very well to e-Governance Projects and towards the increasing trend of computerization and digitization of records pertaining to various services provided. This feature, together with the ability for to establish uniqueness is leading to linking of with service delivery.

99. The contents of Para 8(M)(ii) are denied. It is denied that the respondent is actively canvassing with foreign embassies and missions to insist that applicants for visas must produce an Aadhaar identification. It is submitted that the statements have been made on the basis of reports in newspapers, which cannot be substantiated. The respondents are not aware of any move to replace the passport by the Aadhaar number. Also, as brought out above, determination of



eligibility remains within the domain of the respective Foreign Governments.

100. The contents of Para 8(M)(iii) & (iv) are denied. It is submitted that as far as the Government of India is concerned, the Direct Benefit Transfer Scheme notification dated 26<sup>th</sup> December, 2012, annexed hereto and marked as ANNEXURE R-14 (Pages 183 to 184) clearly states that no person shall be denied service for want of Aadhaar or bank account. It is further submitted that even as far as the Direct Benefit Transfer Liquified Petroleum Gas Scheme is concerned, it has been provided that there is no disruption of service to consumers who do not provide Aadhaar, as only subsidy and not service has been made conditional on providing Aadhaar number. The application of Aadhaar for disbursement of subsidy to LPG consumers is emerging to be a case study of removal of fakes and duplicates from beneficiary lists, targeted subsidy to individuals and customer delight in receiving subsidy amount in bank accounts seamlessly. It is also pertinent to note that the OMC have so far made over 10 million transactions of subsidy transfer amounting to over Rs. 400 crore using the Aadhaar enabled system. Further, the OMCs have detected around forty five thousand (45,000) duplicate connections in 20 Districts where the scheme was introduced from June 2013 on the basis of the Aadhaar numbers submitted under the scheme so far. Once these duplicate connections are blocked, it would save the exchequer around Rupees Twenty Three Crores (Rs. 23,00,00,000) per annum on the assumption that the entitlement of nine cylinders per annum is consumed and each cylinder incurs a subsidy of Rupees Five Hundred and Fifty Five and Fifty Five Paise (Rs. 555.55). Once the scope of the DBTL scheme expands to cover more districts, more



such duplicate connections will be detected leading to higher savings of public money. In addition a number of State Governments have introduced Aadhaar for service delivery entirely on their own volition recognizing the importance of capability of Aadhaar as a unique identifier.

101. It is submitted that it is incumbent on the Government or any other authority to discharge its duties and responsibilities in an orderly, effective and transparent manner. It is also a well established prerogative of the Government to organize its work following sound management practices, periodically re-engineer its processes and make use of technology to induce efficiency, convenience, transparency and accountability in the delivery of public services. The Aadhaar scheme and its application to public services is a well considered decision of the Government of India to ensure benefits go to intended individuals, leakages and wastes in the deployment of public funds are reduced and residents can avail services with ease and convenience.
102. It is respectfully submitted that no person would suffer for not having Aadhaar number in view of the notification issued by the Government of India and adequate steps will be taken to ensure the provision of adequate time and opportunity to bonafide residents to obtain an Aadhaar number. In the meanwhile no resident is put to hardship for not having obtained Aadhaar number in spite of having applied for the same or because of the fact that the area where he/she resides is still in the process of being covered. Those persons would be governed by the Executive instructions of the Government of India and will not suffer in obtaining benefits under subsidy scheme or welfare scheme. In so far as application of Aadhaar by various State Governments is



concerned the petitioner have not cited them as respondents and the Government of India cannot respond on their behalf.

103. The contents of Para 8(M)(v) are denied. It is submitted that the project is currently in its 4<sup>th</sup> year and does not claim to have covered the entire population. In all cases where is being linked to the delivery of a benefit to a resident, steps are being taken to ensure that enrolment, if not already done, is being conveniently facilitated and reasonable opportunity and time is being provided to the residents to obtain Aadhaar.
104. The contents of 8(N) are denied. It is denied that there is a failure to provide an opt out option or that rights under Article 21 has been transgressed by the respondent. It is submitted that Aadhaar Scheme is a voluntary identity scheme and a resident can opt not to enroll himself under the scheme. It is submitted that the UID is essentially a service-delivery tool, and is not designed for any other purpose. As long as a person is availing some benefits based on Aadhaar, he/she does not have the need for an opt-out clause. Since the Aadhaar is unique to a person, it cannot be transferred or used by anyone else. If a person dies, the Aadhaar cannot be used and perishes with the person, so if someone does not wish to use the Aadhaar, it cannot be put to use by anyone else and will remain dormant. The use of Aadhaar number is based on physical presence and the resident giving biometrics to authenticate. In case a person wants to opt-out from using his Aadhaar he /she is at liberty to not authenticate himself/herself.
105. The contents of Para 8(O) are denied. It is submitted that the verification process of UID is designed to be inclusive. The



over-arching goal is that everybody who is a resident of India should be able to enroll. It accepts documents for those who have some kind of documents which can work as proof of identity and proof of address. In this regard, it may be mentioned that the introducer system was primarily devised by the Demographic Data Standards and Verification Procedure Committee (DDSVF Committee) chaired by Shri. N. Vittal, former Chief Vigilance Commissioner with a view to enable the residents with no documentary proof to enroll in UIDAI system. For those who have no documents (there are a large number of persons like this in India) the concept of "introducers" has been introduced. These introducers are authorized by the registrars and may include local Government officials and elected representatives. The enrolments through introducers, while enabling enrolments for those who do not have any documents, do not compromise the robustness of the process. The process of introduction has been designed to be technologically non-repudiable as the introducer has to have his/her own number and he/she puts up his/her thumb impression electronically on the enrolment record of the person being introduced. There will be only one ID number for one person in the system.

106. Further, it is respectfully submitted that in a country where millions of people do not possess formal Identity documents and are hence harassed whenever they try to access govt. benefits and schemes, the use of local social linkages is a well accepted and age-old social practice. The concept of Introducers (who themselves must have enrolled in and appointed by registrars) is a formal way of using these linkages and is the only realistic way to bring these communities into the mainstream of social welfare programs. Using the irrational



argument of national security to discourage the introducer system can break the very fabric of rural/local social structures of support and defeat one of the major goals of addressing the 'wrongful exclusion' of people from what is their due.

107. Many of the rural and urban poor do not have proof-of-identity and proof-of-address documents to satisfy the document based verification method of enrolling in . Insisting on existing forms of ID documentation from those who have no ID defeats the inclusiveness of the project. Hence the DDSVP committee suggested the introducer based verification method, the idea being that the registrar appoints authorized introducers (who are local people from the same village/area) who can vouch for the resident (who does not possess Pol and PoA) and hence offer verification of the information submitted by the resident.
108. The UIDAI process of data collection including introducer system was defined by the DDSVP committee headed by Mr. N. Vittal former CVC and whose members included - Dept of Information Technology(DIT), Ministry of Home Affairs represented by Registrar General of India (RGI), Ministry of Rural Development(MoRD), Dept of Telecom(DoT), Reserve Bank of India (RBI), Dept of Post (DoPT), Indian Inst. Of Management (IIM) Lucknow, Dept of Revenue and UIDAI.
109. DDSVP committee laid out the verification procedure of the information (name, address, gender, date-of-birth) collected and articulated 3 distinct methods:
  - i. Verification based on supporting Documents



- ii. Verification based on introducer (for residents who don't have any of the above documents)
  - iii. Verification based on NPR process of public scrutiny
110. The documents submitted by the resident are also verified by a 'Verifier' who are government employees (not sourced from private sector). The verifier first goes over the supporting documents and verifies them before the enrolment is done. The operator who does the actual enrolment also checks the documents before he enters the data. Finally the Enrolling Agency supervisor does an end-of-day verification using a special feature in the enrolment client software of each and every enrolment to ensure correctness. The enrolling person's fingerprints are also captured for auditing purposes. In addition, every introducer has and is biometrically signing introduced enrolments.
111. The key problem of duplicate IDs and ghosts (creating fake IDs that don't really exist) that plagues several databases is eliminated due to use of biometric de-duplication. In fact, this is the true value of system that can help bring all genuine people into the social system and eliminate fake and duplicate IDs as seen in many existing system.
112. The contents of Para 8(P) are denied. It is denied that the UIDAI Project will harm disadvantaged people. It is denied that this will result in simultaneous dismantling of Public Distribution System infrastructure without any validation of the efficacy of the Aadhaar project. The introduction of Aadhaar is always undertaken with due diligence. The Government of India is yet to apply Aadhaar to the PDS system. However the utility of linking Aadhaar to the PDS system has been recognized by this Hon'ble Court dated 14-09-2011 in PUCL Vs



Union of India, WP 161 ( C ) of 2001. Also the National Food Security Act 2013, section 12 (i) C, provides for leveraging Aadhaar for unique identification with biometric information of entitled beneficiaries for proper targeting of the benefits under the Act.

113. The contents of Para 8(Q)(i), (ii) & (iii) are denied. It is submitted that the UIDAI biometric system design has followed global best practices. In designing UIDAI's biometric system, UIDAI reviewed existing state-of-the-art biometric systems, consulted with the world's top biometric experts, conducted a proof of concept study and built biometric system that is currently considered to be world's best.
114. UIDAI has also regularly measured and published empirical and verifiable results. Reviews of the facts and the measures of the live production system are in stark contrast with the claims made about efficacy and accuracy of biometrics system..
115. In December of 2009, UIDAI Committee on Biometrics published its report titled "Biometric Design Standards for UID Applications". The committee acknowledged that most other large-scale biometrics deployments were fingerprint-only and a fingerprint-based system may present challenges in India due to large number of people engaged in agriculture and other manual labour intensive occupations. The committee therefore held extensive meetings and discussions with international experts and technology providers. A technical sub-group analysed fingerprint data collected from Delhi, UP, Bihar, and Orissa and found that the quality of the data was not substantially different from those collected in western countries. The committee stated that it is possible to improve the accuracy of fingerprint system by additionally using iris. *"Iris can provide accuracy comparable to*



*fingerprints. Therefore fused score of two uncorrelated modalities will provide better accuracy than any single modality and could achieve the target accuracy". The final biometric committee report for this study concluded: "The biometric accuracy levels necessary for de-duplication of all residents of India are achievable". Copy of the "Biometric Design Standards for UID Applications " is annexed hereto and marked as ANNEXURE R-15 (Pages 185 to 251)*

116. In December of 2010, UIDAI published a report titled "UID Enrolment Proof-of-Concept Report". The report documents the findings of enrolment proof-of-concept (PoC) study commissioned by UIDAI in three rural areas of Andhra Pradesh, Karnataka, and Bihar. Among other findings both on process and technology, the report says *"The biometric matching analysis of 40,000 people showed that the accuracy levels achieved using both iris and ten fingerprints were more than an order of magnitude better compared to using either of the two individually. The multi-modal enrolment was adequate to carry out de-duplication on a much larger scale, with reasonable expectations of extending it to all residents of India".* Copy of the report "UID Enrolment Proof-of-Concept Report " is annexed hereto and marked as ANNEXURE R-16 (Pages 252 to 283)

117. Subsequently UIDAI developed a multi-modal biometric de-duplication system based on the recommendations of the PoC. The report published in December 2011 has true and tested statistics computed from real operational system at a gallery size (i.e. size of the enrolment database) of 8.4 crore, which is more than 4,000 times the sample size that was available at the time of enrolment PoC. There is



no longer a need to rely on small sample size tests or hearsay from other projects.

118. It is submitted that the UIDAI is fully capable of measuring the capability of the actual production system. This analysis resulting from such large data is empirically repeatable and statistically accurate. Based on the analysis, it can be safely state that enrolment system has proved to be reliable, accurate and scalable to meet nation's need of providing unique number to the entire population.

119. In the above mentioned report, following key observations are made:

- **Failure to Enrol (FTE) Rate: Zero.** As a policy, every unique resident, regardless of their biometrics can be enrolled and issued number.
- **Biometric Failure to Enrol (B-FTE) Rate: 0.14%.** This implies that 99.86% of the population can be uniquely identified by the biometric system. The exceptions (0.14%) however can still be de-duplicated using demographic data and checked manually for fraud. The legitimate cases among these will be issued number.
- **False Positive Identification Rate (FPIR): 0.057%.** This implies that 99.94% of duplicates returned by the biometric de-duplication system are correctly found. In practical terms, it means that at a run rate of 10 lakh enrolments a day, approximately only 570 cases need to be manually reviewed daily to ensure that no resident is erroneously denied an number.
- **False Negative Identification Rate (FNIR): 0.035%.** This implies that 99.965% of all duplicates submitted to the biometric de-duplication system are correctly caught by the system as duplicates. Given that currently approximately 0.5% of enrolments are duplicate submissions, only few thousand duplicate s would "possibly" be issued when the entire country of 120 crores is enrolled due to FNIR.
- **Scalability.** The system is currently processing 10 lakhs (1 million) enrolments a day with enrolment database (gallery) of 9 crore (90 million). It has scaled (grown) as expected. The additional computing power required to handle increasing number of enrolments will not grow at an abnormally high (non-linear) rate; it is well within the design and expectations of the UIDAI.

120. It is evident from the above that the UIDAI's biometric system accuracy is indeed very high and perhaps the best in the world. Both the FPIR and FTE numbers are infinitesimally small in comparison to



wildly speculative numbers that have appeared in some of the critiques of UIDAI. In fact, the project has established India as The world leader in practical biometric implementations. It is further submitted that the Aadhaar project with minimal error margins is a far superior identity system than the 30-50% 'false negatives' prevalent in today's identity systems where a large number of the deserving poor do not have the right ID to qualify for govt. programs specifically designed for them. It is submitted that huge positive impact of 99.9% and above level of accuracy needs to be understood and appreciated by the Petitioners, instead of dismissing the programme due to the presence of a small margin of error.

121. It is further submitted that the contention against biometrics reliability by referring to the research article authored by Samuel P. Fenker and Kevin W. Bowyer titled 'Experimental Evidence of a Template Aging Effect in Iris Biometrics' as referred by the petitioners should not be taken cognizance of because of miniscule sample (subject) size of 43 subjects only.. It should be noted that the main thrust of the white paper is to promote use of both fingerprints and iris. UIDAI had analyzed this data in December 2009 and published its quality results in the January 2010 UIDAI Biometric Standards report. By analyzing Orissa data and other projects where data quality was poor, UIDAI was able to point the root cause of Orissa data to faulty and improperly maintained fingerprint devices. A key recommendation in Standards report, "*that proper operational procedures are followed and good quality devices are used*" was included specifically to correct use of improper devices. This led to UIDAI and STQC establishing a device certification program and UIDAI establishing



operator training program. Quality certification programs required by UIDAI are essential to good operation.

122. It is important to note that currently system enrolled more than 53 crore residents on the ground. UIDAI de-duplication system has detected about 4 crore duplicates and have cancelled few lakhs numbers ensuring the system is accurate and clean.
123. It is submitted that even at current coverage of 53+ crores, UIDAI is able to retain excellent accuracy and performance and is processing 1 million enrolments processing a day. This clearly demonstrates that system will scale easily to cover whole of 120 cr population.
124. By emphasizing scientific approach to data quality, end to end system monitoring and analytics, completely open standard based "vendor neutral" application architecture, and continuous improvement based on modelling of actual process data, UIDAI has demonstrated a world class system that is secure and scalable can indeed be implemented in India.
125. It is denied that biometrics collected are extremely unreliable basis for identifying an individual on national scale. It is denied that the Project suffers from the vice of arbitrariness.
126. The contents of Para 8(R) are denied. It is humbly submitted that this observation of the Petitioner is factually incorrect and uninformed. The use of Aadhaar for MGNREGS and Old Age Pension clearly proves that upto 96% beneficiaries are getting successfully authenticated and the rest are being paid using existing system without any denial of services. It is a matter of fact in service delivery systems that some exceptions shall always remain, and that there has to be an exception



handling mechanism in place, which is also the case with the -enabled service delivery. It needs to be appreciated that is an enabler ad does not seek to replace the entire government monitoring systems.

127. The contents of Para 9 to 14, insofar as they relate to statement of facts, need no comment. However, the rest of the paras under reply are denied

128. The contents of Para 15 are denied. It is submitted that obtaining an Aadhaar remains voluntary. State & Central Governments are notifying Aadhaar to be mandatory for availing benefits under certain schemes. This is because they see value in linking Social Spending to Aadhaar as it provides for targeted disbursement of benefits, removing multiple stages. Also, as it removes ghosts and duplicates, it permits coverage of a larger number of beneficiaries or increasing the per capita benefit available per beneficiary. In all such cases, opportunity and the means are being provided to obtain the Aadhaar number if not already done. The Government gains for the reasons detailed above. The resident gains as he/she gets a free-of cost, state- of- the-art, digital identity proof which is completely portable and non-transferable, and widely accepted anywhere in the country. Not only that, once the Aadhaar is linked to the bank account, various benefits can be directly availed by the beneficiary, in his/her bank account. The fact remains that there is a great felt need for such an identity and that is the reason why in such a short span, over 53 crore residents have already enrolled for Aadhaar .

129. The contents of Para 16 are denied. It is submitted that the total expenditure approved for the Project upto 2017 is Rs.12,398.22 Crores. The expenditure incurred upto 30<sup>th</sup> September 2013 is Rs.



3494 Crores. The UIDAI is fully funded from the consolidated fund of India following a due process of parliamentary control as per the Appropriation Act and all expenditure incurred by it is audited by the Comptroller & Auditor General of India. This cost encompasses not only the entire costs of running the UID project, but also caters to the creation of the necessary technical infrastructure for integration of into the schemes of the Government of India and for developing - enabled applications to be provided to the state governments. Further, considering the scale and complexity of this transformational e-governance initiative, the projected cost is reasonable and realistic. Moreover, the long-term benefits of the project would far outweigh the total cost.

130. The contents of Para 17, 18, 19 & 20 are denied. The UIDAI has clearly defined who can be a registrar. A formal process is in place, both by way of entering into a MoU with the UIDAI and in completing a sequence of technical requirements, prior to start of work as registrar for the UIDAI. Every single successful enrolment, carried out by a Registrar can be identified on the system with details of the operator, time taken etc. For greater efficiency, UIDAI engages with Registrars who in their normal course collect information from residents. The basic demographic information and biometric information is hence collected by registrars. In addition, they may collect any other information that they need to collect.


131. The contents of Para 21 are denied. It is denied that there is no responsibility of UIDAI for the security of the personal biometric data. The detailed submissions are made hereinbefore on the security of the data and the same are reiterated.



132. The contents of Para 22 are denied. It is denied that the method is fraught with potential leakages and there is no safety in respect of data being collected.
133. The contents of Para 23 are denied. It is denied that there is no screening or that the enrolment agencies have not been empanelled following a proper procedure.
134. The contents of Para 24 & 25 are denied. It is denied that private entities can access the biometric information or that it can be used or misused by any of the private entities. It is submitted that adequate privacy and security is in place to maintain integrity of the data.
135. The contents of Para 26 are denied. It is submitted that the data sharing policy is limited only to the demographic details of the resident who has specifically given his consent for sharing his demographic details for availing the benefits of the welfare schemes of the respective Governments.
136. The contents of Para 27 are denied. This respondent has already replied in detail to each of the grounds which have been raised in Para 7 and subsequent paragraphs and the same may be read as part and parcel to the reply to Para 27.



137. In the facts and circumstances stated hereinabove, it is respectfully submitted that the writ petition is not at all maintainable, devoid of any merits and deserves to be dismissed in limine with exemplary costs.

  
DEPONENT

#### VERIFICATION

Assistant General  
Unique Identification  
Planning & Development  
Commission  
Ministry of Urban Affairs  
New Delhi-110001

Verified at New Delhi on this the \_\_\_\_\_ day of October 2013 that the contents of the above paras are true and correct to the best of my knowledge and nothing material has been concealed there from.

  
DEPONENT

Kunish Kumar  
Joint Director General  
Ministry of Urban Affairs  
New Delhi-110001